

ORDINANCE NO. 15-15

AN ORDINANCE AUTHORIZING THE CITY OF WEST LAFAYETTE, INDIANA TO
ISSUE OBLIGATIONS FOR THE FUNDING AND CONSTRUCTION OF A SEWER AND
WATER UTILITY SERVICE PROJECT FOR THE PURDUE RESEARCH FOUNDATION
AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the West Lafayette Economic Development Commission (the “EDC”) has rendered its Report regarding the acquisition, construction and improvement of a sewer and water utility service project (the “Project”) to provide utility benefit to the area of State Street and Airport Road in the City of West Lafayette, Indiana (the “City”) and the financing of such Project for the Purdue Research Foundation (the “Borrower”); and

WHEREAS, the EDC conducted a public hearing at 2:00 p.m. on May 4, 2015 following proper public notice published in the *Journal & Courier* on April 18, 2015, and following such hearing the EDC found that the financing of such economic development facilities for the Borrower complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and that such financing will be of benefit to the health and welfare of the City and its citizens, and the EDC adopted a resolution regarding the financing for the Project (the “Resolution”), which Resolution has been transmitted hereto; and

WHEREAS, the EDC has heretofore reviewed this form of Ordinance and recommended the adoption of this Ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and transmitted the Installment Purchase Contract and the Participation and Purchase Agreement (both attached hereto) to this Common Council for approval; and

WHEREAS, the Project is expected to save opportunities for gainful employment in the City and will be of benefit to the health and general welfare of the City and its citizens;

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF WEST LAFAYETTE, INDIANA THAT:

Section 1. The Installment Purchase Contract, by and among the City, the Borrower and PRF Utility 2015 LLC (or any other related entity) (the “Company”) (collectively, the “Parties”), will memorialize the promises, covenants, representations, warranties and obligations of the Parties for the financing, acquisition, construction and improvement of the Project, to be delivered to, owned and controlled by the Borrower.

Section 2. It is hereby found that the financing of the Project referred to in the Installment Purchase Contract that was approved by the EDC and presented to this Common Council, includes financing the acquisition, construction and improvement of a drainage and flood mitigation project on property owned and controlled by the Borrower, and the payment of

the obligations by the Borrower pursuant to the Installment Purchase Contract (the "Obligations") complies with the purposes and provisions of I.C. 36-7-11.9 and 12, and will be of benefit to the health and welfare of the City and its citizens.

Section 3. At the public hearing held before the EDC, the EDC heard all public comments and considered whether the Project would have an adverse competitive effect on any similar facilities located in or near the City, and subsequently found no convincing evidence that the Project would have an adverse competitive effect on other businesses in the City. This Common Council hereby confirms the findings set forth in the Resolution, and concludes that the Project will not have an adverse competitive effect on other similar facilities in or near the City, and finds that the Project will be of benefit to the health and welfare of the citizens of the City.

Section 4. The form of the Installment Purchase Contract approved by the EDC is hereby approved (a "Financing Agreement" as defined to in I.C. 36-7-11.9), subject to such changes as are approved by the Mayor prior to its execution. The Installment Purchase Contract shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk-Treasurer. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of the form of Installment Purchase Contract are on file in the office of the Clerk-Treasurer for public inspection.

Section 5. The form of the Participation and Purchase Agreement (the "Participation Agreement"), by and among the City, the Borrower, the Company and MainSource Bank, approved by the EDC is hereby approved, subject to such changes as are approved by the Mayor prior to its execution. The Participation Agreement shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk-Treasurer. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of the form of Participation Agreement are on file in the office of the Clerk-Treasurer for public inspection.

Section 6. The Obligations, as more particularly described in the Installment Purchase Contract, will be dated the date the Obligations are issued, will not exceed \$3,000,000 in principal amount, and are payable as to principal and interest from the installment payments made by the Borrower for a term not to exceed thirty (30) years beginning from the date of execution of the Installment Purchase Contract (the "Term"). The Obligations may not bear interest at a rate in excess of 12% per annum. Any prepayment terms may be negotiated by the Borrower.

Payments of principal and interest are payable in lawful money of the United States of America by check or draft mailed or delivered as provided in the Installment Purchase Contract. The Obligations shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City nor are the Obligations payable in any manner from any revenues collected by the City or its subdivisions, including revenues raised by taxation. By January 31 of each year of the Term, the Borrower shall provide to the Clerk-Treasurer a report identifying the aggregate amount of Obligations outstanding as of December 31 of the previous year.

Section 7. The Mayor and Clerk-Treasurer, together or individually, are authorized and directed to execute and to attest, affix or imprint by any means the City seal to the Installment Purchase Contract and Participation Agreement approved herein on behalf of the City and any other document or certificate which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the necessary transactions approved by this Ordinance. The Mayor and Clerk-Treasurer are hereby expressly authorized to approve any modifications or additions to the Installment Purchase Contract, Participation Agreement and all related documents which take place after the date of this Ordinance with the review and advice of counsel to the City; it being the express understanding of this Common Council that said Installment Purchase Contract and Participation Agreement may change; however, the statutorily required approvals of the Common Council shall not change after the date of this Ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum principal amount of, interest rate on or term of the Obligations as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and Clerk-Treasurer on the Installment Purchase Contract and any document memorializing the Obligations may be either manual or facsimile signatures.

Section 8. The provisions of this Ordinance and the Installment Purchase Contract securing the Obligations shall constitute a contract binding between the City, the Purchaser and the Borrower, and after the issuance of said Obligations, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders of the Obligations so long as said Obligations or the interest thereon remains unpaid.

Section 9. This Ordinance shall be in full force and effect from and after its passage.

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ATTACHMENTS

Economic Development Commission Resolution (executed)

Form of the Installment Purchase Contract

Form of the Participation and Purchase Agreement

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